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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. OMAR LAMONT WILLIAMS, Defendant and Appellant.	A157031 (Contra Costa County Super. Ct. No. 5-142200-5)

Omar Lamont Williams was convicted of forcible rape in concert (Pen. Code, § 264.1)[1], kidnapping for extortion (§ 209, subd. (a)), and multiple other counts based on offenses committed when he was 23 years old. After a successful appeal resulting in a remand for resentencing, Williams now challenges his new sentence as unauthorized. Williams also contends that his categorical exclusion, as a sex offender sentenced under the One Strike Law (Stats. 1994, 1st Ex. Sess. 1993-1994, ch. 14X, § 1, p. 8570; § 667.61), from eligibility for a youth offender parole hearing under section 3501 violates equal protection. We agree with both contentions and therefore remand for resentencing and an opportunity to develop the facts relevant to a youth offender parole hearing.

[1] All undesignated statutory references are to the Penal Code.

BACKGROUND

A.

The underlying facts and procedural history are primarily taken from this Court's unpublished opinion in Williams's prior appeal. (*People v. Williams*, 2018 Cal.App.Unpub.LEXIS 2882 (April 27, 2018, A147160) [non pub. opn.] (*Williams*).)[2]

In May 2014, Williams's cousin Audrey Sims had an altercation with Jane Doe, accusing Doe of owing her money. Williams, who was 23 at the time, got involved and took Doe's phone. He choked her, called her a "bitch," and told her she owed his cousin money. Although Doe denied the debt, Williams and Sims told Doe she needed to figure out a way to make the money back that night. They told her she was going to "get on Redbook," a prostitution website, and they would get clients for her. Doe refused but Williams and Sims told her they didn't care what she wanted. Williams pulled a gun out from the back of his pants and said, "I'm not stupid. You have a pussy, right?" Williams pointed the gun in Doe's face and said "he was about that life and that he wasn't afraid to use it."

Williams and another individual who was present, Michael Keith Madison, told Doe they needed pictures of her to put on her Redbook page. Williams and Madison had Doe get in the back seat of her car with Williams driving. Williams said Doe would have to prostitute herself one to three times each day to pay back the money she owed.

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[2] We deny as unnecessary Williams's request for judicial notice of the appellate record. (See *In re Reno* (2012) 55 Cal.4th 428, 484 ["Petitioners need not separately or specifically request judicial notice of all documents connected with their past appeals"].)

Williams drove to a gas station and sent Madison inside the store to buy condoms. Williams later drove back to the complex where Sims lived and stopped at a grassy area by the community pool. He and Madison were smoking and drinking. Williams took Doe into the bushes and photographed her with her pants pulled down, saying he would post the pictures on Redbook.

Williams, who had a gun, forced Doe to give both him and Madison oral sex. While Doe performed oral sex on Williams, Madison tried to have anal sex with her before raping her vaginally. Doe was crying and the men were laughing. Williams also raped her vaginally. The incident ended when Doe said she needed to go pick up her son. Doe drove to a friend's house, hysterical, and said she had been raped. The friend called the police.

B.

Section 667.61, known as the "One Strike" law (Stats. 1994, 1st Ex. Sess. 1993-1994, ch. 14X, § 1, p. 8570), is an alternative, harsher sentencing scheme that applies to specified felony sex offenses. (*People v. Anderson* (2009) 47 Cal.4th 92, 102.) For covered offenses, the One Strike law mandates a sentence of either 15 years to life or 25 years to life depending on whether certain factual circumstances are found true. (*Ibid.*; see also § 667.61, subds. (a)-(b).) For some of the covered sex offenses, if the crimes involve separate victims or the same victim on separate occasions, the trial court must impose consecutive sentences. (§ 667.61, subd. (i).) As relevant in Williams's case, "[t]he sentence will be 25 years to life if the jury finds (or the defendant admits) . . . one of the more aggravated 'circumstances' listed in section 667.61, subdivision (d)." (*People v. Perez* (2015) 240 Cal.App.4th 1218, 1223, italics omitted.) The circumstances enumerated in section 667.61, subdivision (d) include: "The defendant kidnapped the victim of the present

offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense." (§ 667.61, subd. (d)(2).) Forcible rape in concert (§ 264.1) and forcible oral copulation in concert (§ 287, subds. (c)-(d)) are among the offenses that qualify for treatment under the One Strike law. (§ 667, subds. (c)(3), (c)(7).)

C.

A third amended information was filed charging Williams as follows: count one: conspiracy to commit kidnapping for extortion, human trafficking and pandering (§§ 182, subd. (a)(1), 209, subd. (a); 236.1, subd. (b); 266i); count two: kidnapping for extortion (§ 209, subd. (a)); count three: human trafficking (§ 236.1, subd. (b)); count four: forcible rape in concert (§ 264.1); count five: forcible oral copulation in concert (§ 288a, subd. (d)). The third amended information also alleged that Williams had personally used a firearm within the meaning of section 12022.53, subdivision (b), in the commission of the kidnapping charged in count two; had personally used a firearm within the meaning of section 12022.5, subdivision (a), in the commission of the human trafficking charged in count three; and had been armed with a firearm within the meaning of section 12022, subdivision (a)(1), during the commission of the rape in concert and oral copulation in concert charged in counts four and five. Finally, as to the oral copulation charged in count five, it was alleged under the One Strike law that Williams (along with Madison) had kidnapped the victim within the meaning of section 667.61, subdivision (d)(2), and that the movement substantially increased the risk of harm to her above that level of risk inherent in the underlying offense.

Williams was jointly tried along with his codefendants, Sims and Madison. The three defendants were convicted as charged. Williams

received the following sentence: (1) a One Strike term of 25 years to life for the rape in concert conviction under count four, plus one year for the firearm enhancement pursuant to section 12022, subdivision (a)(1); (2) 25 years to life for the oral copulation in concert conviction under count five, plus one year for the firearm enhancement pursuant to section 12022, subdivision (a)(1), concurrent to the sentence in count four; (3) life with the possibility of parole for the kidnapping conviction under count two, plus a 10-year firearm enhancement pursuant to section 12022.53, subdivision (b), concurrent to the sentence in count four; (4) life with the possibility of parole for the conspiracy conviction under count one, that sentence to be stayed pursuant to section 654; and (5) the lower term of eight years for the human trafficking conviction under count three, plus the lower term of three years for the firearm enhancement under section 12022.5, subdivision (a), with "the 11 years that is imposed" being "concurrently stayed under Penal Code section 654." The trial court also ordered that Williams pay a restitution fine under section 1202.4 in the amount of $300 per count, or a total of $1,500, and stayed a parole revocation fine in the same amount under section 1202.45.

D.

In Williams's prior appeal, this Court affirmed his conviction but remanded the case for resentencing. (*Williams*, *supra*, 2018 Cal.App.Unpub.LEXIS 2882.) This Court held that the One Strike sentence for Williams's rape in concert conviction under count four was unauthorized because the accusatory pleading did not include a specific One Strike allegation as to that count. (*Ibid.*) In addition, this Court held that because the case was being remanded for resentencing on count four, the trial court could consider whether to strike or impose the firearm enhancements on counts two and three pursuant to newly enacted discretionary authority in

sections 12022.5, subdivision (c), and 12022.53, subdivision (h). (*Williams, supra,* 2018 Cal.App.Unpub.LEXIS 2882.) This Court also identified errors relating to Williams's restitution and parole revocation fines. (*Ibid.*) The disposition read as follows: "The true finding on the One Strike allegation attached to [Williams's] rape in concert conviction[] under count 4 is vacated and the case is remanded for resentencing on that count. At the time of resentencing, the court may exercise its discretion under sections 12022.5, subdivision (c), and 12022.53, subdivision (h), as to any counts to which that discretion applies. The court shall reduce [] Williams's restitution fine and parole revocation fine under sections 1202.4 and 1202.45 from $1,500 to $900, and shall modify the abstract of judgment in Williams's case to reflect this modification and to indicate that the sentence for human trafficking under count 3 was stayed under section 654. As so modified, the judgment is affirmed." (*Ibid.*)

DISCUSSION

A.

Both parties contend that, following remand, the trial court's resentencing authority was limited to carrying out the instructions in this court's disposition. Although we disagree as to the scope of the trial court's authority, we agree that a remand for resentencing is nonetheless required here.

1.

The parties cite the principle that after the appellate court issues "a remittitur, 'the trial court is revested with jurisdiction of the case, *but only to carry out the judgment as ordered by the appellate court.*' " (*People v. Picklesimer* (2010) 48 Cal.4th 330, 337, quoting *People v. Dutra* (2006) 145 Cal.App.4th 1359, 1366.) While the trial court must no doubt act in

accordance with the appellate court's instructions, in the resentencing context a special rule applies: "when part of a sentence is stricken on review, on remand for resentencing 'a full resentencing as to all counts is appropriate, so the trial court can exercise its sentencing discretion in light of the changed circumstances.' " (*People v. Buycks* (2018) 5 Cal.5th 857, 893; see also, e.g., *People v. Valenzuela* (2019) 7 Cal.5th 415, 424-425 ("the full resentencing rule allows a court to revisit all prior sentencing decisions when resentencing a defendant"].) However, on resentencing, the court may not increase the defendant's aggregate prison term after a partially successful appeal. (*People v. Burbine* (2003) 106 Cal.App.4th 1250, 1253, 1256.)

2.

With respect to counts one (conspiracy to commit kidnapping, human trafficking, and pandering) and two (kidnapping for extortion), the parties agree that the trial court issued unauthorized sentences.

At the original sentencing, on count one, the court sentenced Williams to life with the possibility of parole, staying the sentence pursuant to section 654. On count two, the court sentenced Williams to life with the possibility of parole with a 10 year firearm enhancement pursuant to section 12022.53, subdivision (b) (to run concurrently with the original sentence for count four).

This court's prior opinion affirmed the judgment as to these sentences but authorized the trial court to consider whether to strike the firearm enhancement as to count two. *(Williams, supra,* 2018 Cal.App.Unpub.LEXIS 2882; § 12022.5, subd. (c).)

On remand, the trial court declined to strike the enhancement as to count two but modified both sentences. On count one, the court imposed an "indeterminate life term [with] seven year[s] mandatory minimum parole" and stayed it pursuant to section 654. On count two, the court imposed "an

indeterminate life sentence which in effect means a[n] initial seven-year minimum parole term" plus a 10 year firearm enhancement."

It is undisputed, however, that the correct sentence is life with the possibility of parole for both counts, with the firearm enhancement applicable to count two. (See §§ 182, subd. (a) [penalty for conspiracy to commit multiple felonies is the penalty for the felony with the greater maximum term]; 209, subd. (a) [penalty for kidnapping unaccompanied by death or bodily harm is life with the possibility of parole].)[3] Accordingly, on remand, the trial court should impose sentences of life with the possibility of parole for counts one and two, with the firearm enhancement applicable to count two.

3.

With respect to count three (human trafficking), the parties assert that the trial court erred in increasing Williams's sentence on remand and declining to stay it pursuant to section 654. (See §654 [where an act is "punishable in different ways by different provisions of law, . . . in no case shall the act . . . be punished under more than one provision"].) The court originally sentenced him to eight years in prison for the human trafficking conviction plus three years for the firearm enhancement, staying the sentence pursuant to section 654. This court's prior opinion affirmed the judgment as to this count but authorized the trial court to exercise its discretion to determine whether to strike the firearm enhancement pursuant to section 12022.5, subdivision (c). *(Williams, supra,* 2018 Cal.App.Unpub.LEXIS 2882).) On remand, the trial court declined to strike

[3] The penalty for kidnapping is greater than the penalties for the other crimes Williams was convicted of conspiring to commit. (See 236.1, subd. (b) [penalty for human trafficking is eight, 14, or 20 years and a fine not to exceed $500,000]; 266i, subd. (a) [penalty for pandering not involving a minor is three, four, or six years].)

the enhancement. However, under the mistaken belief that it had originally selected a four-year enhancement, the court imposed an enhancement of four years on remand, resulting in a 12 year total sentence on count three. The court also failed to stay the sentence pursuant to section 654, as it had done originally. Under the full resentencing rule, the court had authority to select a four year enhancement rather than the original three year enhancement. However, because Williams is entitled to a remand for resentencing on counts one and two, as discussed above, on remand the trial court may consider whether it wishes to impose the original three year enhancement or increase the enhancement term, so long as the aggregate term is not increased. On remand, the court shall stay the sentence pursuant to section 654.

4.

Finally, the abstract of judgment does not accurately reflect the trial court's imposition of $900 in restitution fines under section 1202.4. On remand, the abstract of judgment and clerk's minutes must accurately reflect the sentence orally pronounced by the trial court. (See *People v. Zackery* (2007) 147 Cal.App.4th 380, 385.)

B.

Relying on *People v. Edwards* (2019) 34 Cal.App.5th 183 (*Edwards*), Williams asserts that his categorical ineligibility, as a One Strike offender, for a youth offender parole hearing under section 3051 violates equal protection. *Edwards* considered an identical equal protection claim and held that section 3051 irrationally discriminates against One Strike offenders. *Edwards* reasoned that One Strike offenders are similarly situated to first degree murderers, who remain eligible for youth offender parole hearings even though their crimes are universally regarded as more culpable than the violent sex crimes that fall under the One Strike law. (*Edwards, supra*, 34

Cal.App.5th at pp. 195-199.) We agree with *Edwards* and conclude that on remand Williams is entitled to an opportunity to develop the factual record relevant to a future youth offender parole hearing.

1.

Section 3051 "sets mandatory parole eligibility dates for most persons convicted of crimes before they turned 25." (*People v. Garcia* (2018) 30 Cal.App.5th 316, 325.) Parole eligibility is set at 15 years, 20 years, or 25 years depending on the sentence for the "controlling offense" – the offense or enhancement for which the sentencing court imposed the longest imprisonment term. (§ 3051, subds. (a)(2)(B), (b)(1)-(4); see also § 3046, subd. (c).) Thus, for example, a young person sentenced to a term of imprisonment of 25 years to life or greater becomes eligible for release on parole at a youth offender parole hearing during the person's 25th year of incarceration. (§ 3051, subd. (b)(3); see, e.g., *People v. Franklin* (2016) 63 Cal.4th 261, 277 (*Franklin*) ["notwithstanding [Franklin's] original term of 50 years to life" for first degree murder with a firearm enhancement, "he is eligible for a 'youth offender parole hearing' during the 25th year of his sentence."].)

Youth offender parole hearings differ from traditional parole hearings because, in determining parole suitability, the Board of Parole Hearings "shall give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (§ 4801, subd. (c); see also *Franklin*, *supra*, 63 Cal.4th at p. 269 ["The criteria for parole suitability set forth in . . . sections 3051 and 4801 contemplate that the Board's decisionmaking at [a youth offender's] parole hearing will be informed by youth-related factors, such as [the offender's] cognitive ability, character, and social and family background at the time of the offense."].)

Because Williams was 23 at the time of his offenses, he would be eligible for a youth offender parole hearing but for the fact that youth offenders sentenced under the One Strike Law (§ 667.61) are categorically excluded. (§ 3051, subd. (h).) Section 3051 is also inapplicable to those sentenced under the Three Strikes Law (§§ 1170.12 and 667, subds. (b)-(i)); those sentenced to life in prison without the possibility of parole for a controlling offense committed after age 18; and those who would otherwise be eligible but who commit an additional crime before age 26 for which malice aforethought is an element or for which a sentence of life in prison is received. (§ 3051, subd. (h).) As a result of these exceptions, Williams – whose controlling sentence is a 26 years to life term of imprisonment – is ineligible even though a first degree murderer sentenced to 50 years to life is entitled to a youth offender parole hearing in his 25th year of incarceration. (See *Franklin*, *supra*, 63 Cal.4th at p. 277.)

2.

To succeed on his equal protection claim, Williams must show "that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*Edwards*, *supra*, 34 Cal.App.5th at p. 195.) The two groups need not be the same in all respects but must be similarly situated for the purposes of the challenged law. (*Id.* at p. 198; see also, e.g., *Somers v. Superior Court* (2009) 172 Cal.App.4th 1407, 1413 [" '[T]he classification must be based upon some difference between the classes which is pertinent to the purpose for which the legislation is designed. ' "]

Williams contends that with respect to the purposes of section 3051, One Strike offenders are similarly situated to first degree murderers. As *Edwards* explained, "the purpose of section 3051 is to give youthful offenders a 'meaningful opportunity to obtain release' after they have served at least

15, 20, or 25 years in prison (§3051, subd. (e)) and made 'a showing of rehabilitation and maturity.' " (*Edwards*, *supra*, 34 Cal.App.5th at p. 198, citing *People v. Contreras*, (2018) 4 Cal.5th 349, 381 (*Contreras*).) In light of decisions of our Supreme Court and the United States Supreme Court recognizing the diminished culpability of juvenile offenders, the legislature's "expressly stated rationale was to account for neuroscience research that the human brain—especially those portions responsible for judgment and decisionmaking—continues to develop into a person's mid-20s." (*Edwards*, *supra*, 34 Cal.App.5th at p. 198; see also, e.g., *Contreras*, *supra*, 4 Cal.5th at p. 367 [holding that sentences of 50 years to life and 58 years to life for juvenile One Strike offenders violate the Eighth Amendment, because "[a] lawful sentence must recognize 'a juvenile nonhomicide offender's capacity for change and limited moral culpability' "], quoting *Graham v. Florida* (2010) 560 U.S. 48, 74 (*Graham*); *Graham*, *supra*, 560 U.S. at 68 [compared to adults, "juveniles have a ' lack of maturity and an underdeveloped sense of responsibility '; they 'are more vulnerable or susceptible to negative influences and outside pressures,' . . . and their characters are 'not as well formed.' "].) *Edwards* concluded that in view of this legislative purpose, youthful One Strike offenders are similarly situated to youthful first degree murderers. (*Edwards*, *supra*, 34 Cal.App.5th at p. 198; see also *Miller v. Alabama* (2012) 567 U.S. 460, 473 [explaining that "none" of the rationales concerning children's "distinctive (and transitory) mental traits and environmental vulnerabilities" are "crime-specific"].)

Contrary to *Edwards*, the People argue that One Strike offenders are not similarly situated to first degree murderers because One Strike offenses involve multiple criminal acts. However, by conditioning parole eligibility on the length of the youthful offender's "controlling sentence" (§ 3051, subds.

(a)(2)(B), (b)), section 3051 necessarily assumes that eligible offenders may have committed more than one offense. As the youthful offender parole scheme reflects, the fact that a young person may commit more than one offense at once is irrelevant to the legislative purpose of providing youthful offenders with a meaningful opportunity to obtain release based on rehabilitation and maturity. Thus, even assuming the People are correct that One Strike offenses require the commission of multiple criminal acts, that would not make One Strike offenders dissimilar from persons who are eligible for youth offender parole hearings.

Once a similarly situated group has been identified, the next question is whether there is any rational basis for treating them differently. (See *Edwards*, *supra*, 34 Cal.App.5th at pp. 195-196 [no equal protection violation "[i]f a plausible basis exists for the disparity"].) On that question, *Edwards* found "no rational relationship between the disparity of treatment and a legitimate governmental purpose." (*Id.*, at p. 197.) *Edwards* emphasized that "United States Supreme Court and California Supreme Court precedent has already determined that [nonhomicide offenders] 'are categorically less deserving of the most serious forms of punishment than are murderers.' " *(Ibid.;* see also, e.g., *Contreras*, *supra*, 4 Cal.5th at p. 382 [" ' there is a distinction between intentional first-degree murder on the one hand and nonhomicide crimes against individual persons, even including child rape, on the other. The latter crimes may be devastating in their harm, . . . but "in terms of moral depravity and of the injury to the person and to the public," they cannot be compared to murder in their "severity and irrevocability" ' "], quoting *Kennedy v. Louisiana* (2008) 554 U.S. 407, 438.) As a result, *Edwards* concluded that there is no rational basis for offering youth offender parole hearings to first degree murderers while excluding sex offenders

sentenced under the One Strike Law. *(Edwards, supra*, 34 Cal.App.5th, at pp. 196-197; cf. *Doe v. Saenz* (2006) 140 Cal.App.4th 960, 989, 991-992 (*Saenz*) [statutory classification was irrational where it allowed "persons guilty of serious crimes such as murder and felonies punishable by death . . . to apply for an exemption" from disqualification from employment in community care facilities, "yet a person . . . who suffered a second degree robbery conviction . . . is ineligible"]; *Newland v. Bd. of Governors* (1977) 19 Cal.3d 705, 712 [statutory denial of college credential to individuals convicted of misdemeanors but not felons "can claim no rational relationship" to the statutory purpose because "[t]he Legislature could not possibly or sensibly have concluded that misdemeanants, as opposed to felons, constitute a class of particularly incorrigible offenders who are beyond hope of rehabilitation"]; *Stapf v. United States* (D.C. Cir. 1966) 367 F.2d 326, 329 ["Denial of [custody] credit in the context of a jurisprudence where others guilty of crimes of the same or greater magnitude automatically receive credit, would entail an arbitrary discrimination"].)

The People argue that the One Strike Law and other enactments reflect the Legislature's special concern about recidivism by sex offenders. But the question is not whether the Legislature had a rational basis for the One Strike Law – a point that no one disputes. "[I]nstead, the relevant inquiry is whether a legitimate reason exists that permits the Legislature to" afford youth offender parole hearings to first degree murderers while excluding One Strike offenders. (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 884 (*Johnson*).) *Edwards* thus rejected the hypothesis that the Legislature excluded One Strike offenders based on a recidivism rationale, explaining that "of course murderers, too, recidivate, and the state has an interest in severely punishing the crime of murder." (*Edwards*, *supra*, 34 Cal.App.5th at

pp. 198-199.) Moreover, a general concern about recidivism provides no reason to think that young One Strike offenders are less capable of maturity and growth than are young murderers. (Cf. *Saenz*, *supra*, 140 Cal.App.4th at p. 991 ["the Legislature could not possibly have concluded that persons convicted of second degree robbery constitute a class of incorrigible offenders who are less susceptible to rehabilitation and more of a threat . . . than persons convicted of murder"].)[4]

The People contend that *Edwards* misapplied the rational basis test because it noted that the Attorney General in that case cited no evidence that violent sex offenders are more likely than other felons to recidivate. (See *Edwards*, *supra*, 34 Cal.App.5th at p. 199.) However, *Edwards* correctly applied the principle that in determining whether a hypothesized basis is rational, "the realities of the subject matter cannot be completely ignored." (*Edwards*, *supra*, 34 Cal.App.5th at p. 199, citing *Johnson*, *supra*, 60 Cal.4th at p. 881; see also, e.g., *Johnson*, *supra*, 60 Cal.4th at pp. 883-884 [reviewing empirical studies to determine whether a particular rationale was plausible]; *Heller v. Doe* (1993) 509 U.S. 312, 322 [considering whether state's rationale "has a sufficient basis in fact"].)

Finally, the conclusion in *Edwards* draws support from our Supreme Court's decision in *Contreras*. In that case, our Supreme Court considered an Eighth Amendment challenge brought by two juvenile sex offenders who received sentences of 50 years to life or greater under the One Strike Law. (See *Contreras*, *supra*, 4 Cal.5th at pp. 359-360.) In analyzing the claims of

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[4] The parole process itself accounts for recidivism concerns: an inmate found to pose a threat to public safety may not be released on parole. (See, e.g., §§ 3041, subd. (b)(1); 3043, subd. (d); see also *In re Lawrence* (2008) 44 Cal.4th 1181, 1205 ["the fundamental consideration in parole decisions is public safety"].)

these One Strike offenders, *Contreras* addressed the risk of recidivism, emphasizing that although " ' [r]ecidivism is a serious risk to public safety,' . . . ' "incorrigibility is inconsistent with youth." ' " (*Id.*, at p. 366.) Holding that the challenged One Strike sentences violated the Eighth Amendment, *Contreras* relied in part on the notion that a lawful sentence must provide a young offender with "a chance to demonstrate maturity and reform." (*Id.* at p. 367.) Although *Contreras* declined to resolve an equal protection challenge to section 3051, its reasoning supports *Edwards*'s conclusion that the purpose of section 3051 – to provide young offenders a " 'meaningful opportunity to obtain release' " upon " 'a showing of rehabilitation and maturity' " (*Edwards*, *supra*, 34 Cal.App.5th at p. 198, citing *Contreras*, 4 Cal.5th at p. 381) – is no less applicable to One Strike offenders than to first degree murderers.

We agree with *Edwards* and hold that section 3051's categorical exclusion of youthful One Strike offenders from its youth offender parole scheme violates equal protection.

DISPOSITION

The case is remanded to the trial court for resentencing on counts one, two, and three. With respect to count one, the court shall impose a sentence of life with the possibility of parole, staying the sentence pursuant to section 654. With respect to count two, the court shall impose a sentence of life with the possibility of parole, with a firearm enhancement of 10 years. With respect to count three, the court may select the firearm enhancement term it deems appropriate, staying the sentence pursuant to section 654. On remand, the court shall also modify the abstract of judgment to reflect the corrected sentences, and to reflect the court's imposition of $900 in restitutions fines under section 1202.4. Finally, on remand, the court shall determine whether Williams was afforded an adequate opportunity to make a

record of information relevant to a youthful offender parole hearing to be held during his 25th year of incarceration. (See *Franklin*, *supra*, 63 Cal.4th at pp. 286-287.) To the extent he was not, the court shall permit Williams to make such a record. In all other respects, the judgment is affirmed.

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BURNS, J.

We concur:

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JONES, P.J.

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SIMONS, J.

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